

**Commercial Customs Operations Advisory Committee
(COAC)**

April 2016

Report of the Work of the COAC

Subcommittee on Trade Enforcement and Revenue Collection

Co-Chairs

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Background

During the first quarterly meeting of the 14th Term of COAC held on April 24, 2015, it was decided that topics from the 13th Term of the Trade Enforcement and Revenue Collection (TERC) Subcommittee would continue to be worked on in the 14th Term. This includes the Anti-Dumping and Countervailing Duty (AD/CVD), Bonds, and Intellectual Property Rights (IPR) Working Groups. The Regulatory Audit Working Group that was established in the 13th Term continues to be on hiatus until further notice from U.S. Customs & Border Protection (CBP). The subcommittee objectives and scope are consistent with the official charter of COAC.

Summary of Work

The TERC Subcommittee continues to conduct monthly calls to discuss CBP's requirements under the Trade Facilitation and Trade Enforcement Act of 2015 (HR 644). Since the bill was passed and signed into law by President Obama on February 23, 2016, the TERC Subcommittee expects to launch additional Working Groups that will consult with CBP on the various provisions of the new law, such as:

- Forced Labor and changes to Consumptive Demand procedures
- Trade Enforcement metrics through the Centers of Excellence and Expertise (Centers)
- Small Business Outreach

In addition, the TERC Subcommittee has been discussing concerns from the trade regarding CBP's lack of transparency on enforcement policy as recently required by HR 644, and the late issuance of liquidated damage claims, especially those violations involving Ocean AMS violations surrounding the 24-hour rule and FDA redelivery claims. The lack of transparency on enforcement policy and late notice of violations impacts the trade's ability to achieve compliance. As a result of these concerns raised by the trade, the TERC Subcommittee is submitting the following recommendations for consideration:

- *COAC recommends that CBP utilize CSMS messaging when it intends to have a change in its enforcement policy. Like ISF and other phased-in enforcement regimes, at least 30 days notice should be provided to the trade in order to allow ample time to comply. Any new enforcement actions should apply on a going forward basis, not retroactively. Claims issued on a retroactive basis should be reserved for fraudulent and/or egregious violators, not minor clerical errors.*
- *COAC recommends that CBP ensure liquidated damage claims and mitigation guidelines are applied uniformly among all ports of entry based on guidelines established by CBP-HQ in accordance with the enforcement strategy that is communicated to the trade.*

- *COAC recommends that CBP provide FP&F personnel with specific deadlines for issuing liquidated damage claims similar to ISF so claims do not pile up unnecessarily due to any potential delays in issuing them. Liquidated damages are meant to be punitive in nature and allow the violator time to correct and rectify any problems. If violators are held to paying or petitioning liquidated damage claims within 60 days of issuance, CBP should also have guidelines to issue claims on a timely basis to avoid unnecessary hardship on the trade and improve the trade's ability to achieve compliance.*
- *COAC recommends that CBP modify its Mitigation Guidelines, which have not been updated since February 2004. The Mitigation Guidelines should be reviewed in consultation with the COAC to ensure they are meeting new requirements under HR 644 for trade transparency and providing mitigation benefits to ISA, C-TPAT, and Participating Accounts in Centers to reflect a true account-based approach. The Mitigation Guidelines must also contemplate the new Trusted Trader status that is expected to extend beyond the pilot as the Centers become fully functioning. This recommendation would also encompass our prior recommendation to review the FDA Redelivery Mitigation Guidelines. COAC recommends that TERC create a Working Group to address these recommendations over the next six months.*

Since launching the TERC Subcommittee in April 2015, three (3) Working Groups have also been operating. The AD/CVD, Bond, and IPR Working Groups were all carried over from the 13th Term of COAC and consist of over 50 stakeholders from the trade including importers, domestic industry, customs brokers, sureties, attorneys, ABI vendors, carriers, consultants, etc. The progress of each COAC Working Group is provided below.

Anti-Dumping/Countervailing Duty (AD/CVD) Working Group

The AD/CVD WG consists of a wide range of stakeholders (importers, customs brokers, sureties, domestic industry, consultants, etc.) to act as a standing forum of subject matter experts that can be called together by CBP when any issue on AD/CVD matters arise to solicit feedback and advice from the trade. Since the last COAC meeting held in January 2016, three (3) new members from the customs brokerage community were added to the Working Group to ensure a broad range of industries continues to be represented during the monthly calls.

The AD/CVD WG held three (3) conference calls to help educate the AD/CVD WG on the Trade Facilitation and Trade Enforcement ACT, especially the AD/CVD provisions under HR 644.

The AD/CVD WG specifically discussed the following topics:

- 1) **Enforcement Division of the Centers.** With the centers fully functional as of March 2016, the AD/CVD WG invited CBP personnel from the Electronics and Pharmaceutical Centers to provide an overview of their AD/CVD enforcement initiatives. CBP outlined its Trade Enforcement initiatives to work closely with the domestic industry to level the playing field. This can now be better leveraged through each Center that is focused on a specific industry vs. industry knowledge being spread among the different ports of entry.
- 2) **Risk-Based Bonding.** Section 115 of HR 644 requires CBP to implement risk-based bonding within 180 days of the law being signed. In particular, CBP needs to contemplate the risk for Priority Trade Issues, such as AD/CVD. These discussions will also cross over with the Bond Working Group and lead to recommendations for the next COAC meeting in July.

Lastly, the AD/CVD WG hosted two (2) webinars where customs brokers were able to show their ABI process to CBP and the Department of Commerce (DOC) for handling AD/CVD entries. The customs brokers reviewed the complexity of finding information since fragmented between three (3) different government agency websites (CBP, DOC and International Trade Administration (ITA)) and how this could be better managed in ACE.

With AD/CVD cases on the rise as reported by year end Trade and Travel Numbers and the National Economic Report on White House Trade Enforcement, it is clear that further outreach is necessary to help the trade be more compliant and assist CBP in combating evasion. With this backdrop in mind, the AD/CVD WG puts forth the following recommendations:

In support of recommendation #13118 where COAC had previously recommended that CBP utilize CSMS messaging to more actively push out AD/CVD information,

COAC further recommends that CBP utilize CMSS messaging and/or RSS feeds to more actively push out AD/CVD enforcement information in the following circumstances:

- 1) AD/CVD Enforcement Updates, which are made monthly or as available on CBP.gov.*
- 2) Department of Justice investigations for AD/CVD claims filed under the False Claims Act as reported on CBP.gov*
- 3) 592D Penalties for Civil Violations upon completion of investigation.*
- 4) Year-end enforcement statistics on AD/CVD that breaks down enforcement efforts by commodity, country, etc. on an annual fiscal year basis as required by HR 644 (see IPR Annual Seizure Report as an example).*

COAC further recommends that CBP should also utilize CSMS messaging and/or RSS feeds to advise the trade of new AD/CVD Orders that are issued since this represents an important stage in the AD/CVD investigation when all entries are suspended for liquidation and cash deposits must be secured.

In further support of recommendation #13119 where COAC recommended that CBP work with specific industry sectors to develop additional industry outreach related to AD/CVD issues:

COAC further recommends that the Enforcement Division of each Center conduct outreach so the trade can be fully informed of AD/CVD initiatives for each industry sector with a focus on evaluating the scope of complex AD/CVD commodities handled by the Centers. Such outreach should be completed by the end of 2016 and in partnership with the COAC to ensure trade input is addressed within the content of the webinars. COAC recommends the webinars be recorded to provide further benefit to the trade and assist in achieving ongoing compliance.

In further support of recommendation #13120, where COAC recommended that CBP undertake a dedicated communications initiative to further develop and improve information systems currently communicating AD/CVD information to stakeholders,

COAC further recommends that CBP should establish RSS feeds from the AD/CVD page of its website to allow the trade to receive real-time notifications of any updates made to the site.

CBP should also provide an updated document to the trade that provides clear definition of what is meant by terminated vs. inactive AD/CVD cases as identified in the customs broker outreach that was conducted.

CBP should comply with the requirements of HR 644 to provide trade transparency on enforcement issues, including AD/CVD. This would entail putting forth a quarterly and year-end report on AD/CVD violators. COAC recommends that CBP develop a database that would allow the trade to search for violators similar to the AD/CVD Search functionality by commodity. This would allow the trade to better vet suppliers, importers, etc. that are already known violators of AD/CVD evasion.

In further support of recommendation #13121 regarding the development of a single, multi-agency managed website dedicated to AD/CVD

The COAC further recommends that CBP's AD/CVD Web Page become the central point of location to host links to other government websites where information can be found to allow the partner agencies to continue maintaining and hosting their own information. The AD/CVD web page is already robust and can be further enhanced within 90 days to complete this pending recommendation.

The AD/CVD WG will continue to maintain regular calls to discuss on-going challenges with AD/CVD matters and brainstorm new initiatives to help with enforcement and revenue collection. The AD/CVD WG will also continue to have ongoing discussions on how CBP, the Department of Commerce (DOC), and the trade can work together to implement more effective communication and education tools to improve enforcement and facilitate legitimate AD/CVD importations.

Bond Working Group

Since the last COAC meeting in January 2016, a Bond Working Group (BWG) was created and new members from the customs brokerage community were added. The BWG consists of a wide range of stakeholders (importers, customs brokers, sureties, attorneys, ABI vendors, etc.) and will consider the revisions to Bond Directive 3510-004, which contains monetary guidelines for setting bond amounts.

The first conference call was held on Thursday, January 21, 2016, and 2 (two) additional conference calls were held to review the first draft of the Bond Directive. The BWG is in the process of providing its feedback to CBP on the draft changes in the hopes of finalizing any recommendations before the next COAC meeting in July. The BWG will also consider the rewrite to 19CFR113, Drawback Bond Revisions, AD/CVD Bonding, and/or additional topics that CBP may present to the COAC BWG for review.

Intellectual Property Rights Working Group

During the 13th term of COAC, the Intellectual Property Rights Working Group (IPRWG) suggested that COAC explore whether an IPR Known Importer program would offer CBP better targeting, while providing facilitation benefits to the trade. During the 14th term of COAC, the

IPRWG was once again established to discuss and explore this topic and formulate a recommendation for the viability of an IPR Known Importer program going forward.

The IPRWG held its first call in October 2015, and has maintained monthly calls since then to focus on the following issues:

- 1) Known Importer Program to offer CBP better targeting and facilitate processing. The IPRWG will evaluate the benefit of establishing such a program and incorporating into Trusted Trader status.
- 2) Notifications to Rights Holders that will include a review of the notification process and challenges being experienced by the trade.
- 3) Abandonment (Express) Pilot 1. Based on feedback from CBP on the pilot, the IPRWG will consider what suggestions might be given to move this out of pilot and expand the program.
- 4) Trade Survey. The IPRWG will look to add specific IPR related questions to the COAC Trade Survey.

The IPRWG consists of a wide range of stakeholders (importers, customs brokers, carriers, sureties, consultants, associations, etc.) and will continue to act as a standing forum of subject matter experts that can be called together by CBP when any IPR issues arise to solicit feedback and advice from the trade.

Summary

It is expected that all of the Working Groups will continue to address new and carry over topics from the previous COAC term in its efforts to collaborate with CBP to improve enforcement of the trade laws of the United States and the collection of duties and fees.